

ORIGINAL

MEMORANDUM



0000103756

TO: Docket Control Center

FROM: Steven M. Olea  
Director  
Utilities Division

DATE October 8, 2009

RE: STAFF REPORT FOR THE APPLICATION OF TONTO CREEK UTILITY  
COMPANY FOR APPROVAL OF THE SALE OF ASSETS AND TRANSFER OF  
CERTIFICATE OF CONVENIENCE AND NECESSITY (DOCKET NOS.  
W-02784A-09-0276 AND W-20682A-09-0276)

Attached is the Staff Report for Tonto Creek Utility Company's application for approval of the sale of assets and transfer of its certificate of convenience and necessity to Tonto Creek Water Utility, L.L.C. Staff recommends approval of the sale and transfer.

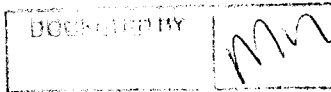
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Originator: Vicki Wallace

Arizona Corporation Commission

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AZ CORP COMMISSION  
DOCKET CONTROL

Service List for: Tonto Creek Utility Company  
Docket Nos. W-02784A-09-0276 and W-20682A-09-0276)

Mr. James Rea  
4486 East Ford Avenue  
Gilbert, Arizona 85234

Mr. Jerry Fisher  
President  
Tonto Creek Utility Co.  
HC 2, Box 94G  
Payson, Arizona 85541

Mr. Steven M. Olea  
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**STAFF REPORT  
UTILITIES DIVISION  
ARIZONA CORPORATION COMMISSION**

**TONTO CREEK UTILITY COMPANY  
DOCKET NOS. W-02784A-09-0276 AND W-20682-09-0276**

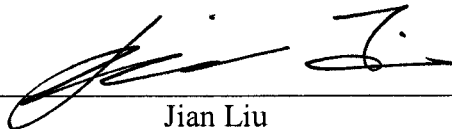
**APPLICATION  
FOR APPROVAL OF THE  
SALE OF ASSETS AND TRANSFER OF  
CERTIFICATE OF CONVENIENCE AND NECESSITY  
TO TONTO CREEK WATER COMPANY, L.L.C.**


**OCTOBER 8, 2009  
STAFF ACKNOWLEDGMENT**

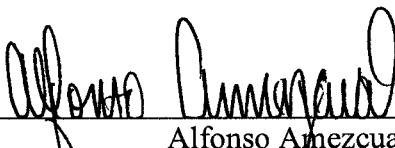
## STAFF ACKNOWLEDGMENT

The Staff Report for Tonto Creek Utility Company (Docket Nos. W-02784A-09-0276 and W-20682A-09-0276) was prepared by the Staff members listed below.

  
Vicki Wallace  
Executive Consultant

  
Jian Liu  
Utilities Engineer

  
Juan Manrique  
Public Utilities Analyst I

  
Alfonso Amezcua  
Public Utilities Consumer Analyst II

**EXECUTIVE SUMMARY OF  
TONGO CREEK UTILITY COMPANY  
DOCKET NOS. W-02784A-09-0276 AND W-20682A-09-0276**

Tonto Creek Utility Company ("TCUC" or "Tonto Creek Utility") is a class E, for-profit Arizona public service corporation that provides potable water service to 73 metered residential customers. The Company is located about 14 miles east of Payson and two and one-half miles north of Kohl's Ranch in Gila County.

Due to health and other issues, Tonto Creek Utility is seeking to sell and transfer the water utility to Tonto Creek Water Company, L.L.C. ("TCWC" or "Tonto Creek Water") which is a limited liability corporation in good standing with the Commission's Corporation Division.

**STAFF CONCLUSIONS AND RECOMMENDATIONS:**

The transferee has public utility experience and will retain the current Certified Operator for operations and maintenance. The transferee will not incur any debt to acquire Tonto Creek Utility's assets and appears to be in good financial condition.

All Tonto Creek Utility's obligations under mainline extension agreements will be paid by transferor at closing. There are no customer deposit obligations.

The existing water system has adequate well production and storage capacity to serve the existing connections.

ADEQ reported that the Tonto Creek Utility (PWS Number 04-021) is in compliance with ADEQ requirements and is currently delivering water that meets State and Federal drinking water quality standards required by the Arizona Administrative Code, Title 18, Chapter 4. (ADEQ report dated July 7, 2009).

A check with the Utilities Division Compliance Section showed no delinquent compliance items for Tonto Creek Utility.

Tonto Creek Utility is not located in any Active Management Area ("AMA") and is not subject to any AMA reporting and conservation requirements. Staff received an Arizona Department of Water Resources ("ADWR") compliance status report, dated July 7, 2009. ADWR reported that Tonto Creek Utility is currently in compliance with departmental requirements governing water providers and/or community water systems.

Staff recommends approval of the transfer of the assets of Tonto Creek Utility to the Tonto Creek Water Company, L.L.C with the following conditions:

1. That the applicants file finalized contracts within 30 days after closing documentation with the Commission in this docket.
1. That Tonto Creek Water advise customers, through individual notice, of the completion of the transfer and provide all contact information for the new owners.

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## **INTRODUCTION**

On June 1, 2009, Tonto Creek Utility Company ("TCUC" or "Tonto Creek Utility") filed an application with the Arizona Corporation Commission ("Commission" or "ACC") for approval of the sale of its assets and transfer of its Certificate and Convenience and Necessity ("CC&N") to the Tonto Creek Water Company, L.L.C. ("TCWC" or "Tonto Creek Water").

On July 1, 2009, the ACC Utilities Division ("Staff") filed an Insufficiency Letter indicating that the Company's application did not meet the sufficiency requirements of the Arizona Administrative Code ("A.A.C."). A copy of the Insufficiency Letter was sent to the Company via U. S. certified mail. In that letter, Staff listed the deficiencies to be cured for administrative purposes.

On July 23, 2009, Tonto Creek Utility filed its response to Staff's Insufficiency Letter and provided additional documentation to support its application. On August 21, 2009, Staff filed a Sufficiency Letter indicating that the application had met the sufficiency requirements of the A.A.C.

## **BACKGROUND**

Tonto Creek Utility is a Class E, for-profit Arizona public service corporation, in good standing with the Commission's Corporation Division, certificated to provide water utility services in Gila County about 14 miles east of Payson and two and one-half miles north of Kohl's Ranch. Tonto Creek Utility provides water service to 73 customers, and its current rates were set pursuant to Decision No. 70707 issued January 20, 2009. The CC&N includes an area totaling approximately 76 acres. Staff's legal description and engineering map of the service area is attached as Exhibit 1.

Due to health and other issues of the owners, Tonto Creek Utility is seeking to sell and transfer the water utility to Tonto Creek Water, which is a limited liability corporation in good standing with the Commission's Corporation Division.

## **PURCHASE AGREEMENT**

A purchase agreement between Tonto Creek Utility and Tonto Creek Water was executed on May 28, 2009. The purchase agreement is attached as Exhibit 2. The main provisions of the purchase agreement are as follows:

1. Tonto Creek Water will acquire all of the assets of Tonto Creek Utility. Although Tonto Creek Water indicated that no liens have been assessed against it or the purchaser, the agreement states that Tonto Creek Utility will assume responsibility for any existing taxes, liens, encumbrances, or any other issues prior to the finalized contract date.

2. Lot 23 (Parcel Identification 927-21-001 ANN #303-03-24A) located in Tonto Creek Estates will be purchased in a separate contract for \$5,000, so the new owner can obtain title to the property. The lot is a half lot, does not contain any plant or any structures that is used by the water company for provision of service. Thus, although it would be considered as an asset, it is not included in rate base for ratemaking purposes. See Exhibit 3 for a further explanation from the buyer.
3. Tonto Creek Water is purchasing Tonto Creek Utility's assets for \$15,000 (with the exception of Lot 23 explained above), and Tonto Creek Utility will make a full refund of all obligations associated with mainline extension agreements, at closing. The closing will take place as of the date of approval by the A.C.C.

### **PURCHASE ANALYSIS**

Attached as Exhibit 4 is the Finance and Regulatory Analysis ("FRA") Report wherein Staff performed an analysis of the book value of the assets being transferred as illustrated in Schedule JCM-1 of the Report. Column (A) reflects Tonto Creek Utility's historical financial information for the year ended December 31, 2008. Staff's analysis shows the book value of the assets to be transferred as \$15,986. Since the difference between the book value and the transfer price is nominal, Staff concludes that the sale price agreed to buy the parties is reasonable.

### **THE EXISTING WATER SYSTEM**

The Tonto Creek Utility water system consists of a well producing approximately 16 gallons per minute ("GPM"), two 15,000 gallon storage tanks, a 2,000 gallon pressure tank and a distribution system serving 73 connections as of the date of this Staff Report. (See Exhibit 5, Staff Engineering Report.)

### **CAPACITY OF EXISTING WATER SYSTEM**

The Tonto Creek Utility water system has adequate well production and storage capacity to serve the existing connections. Tonto Creek Utility's service area is surrounded by the Tonto National Forest; therefore, very little if any growth is expected to occur in the next five years.

### **ORGANIZATION, OPERATION, AND FINANCIAL CONDITION**

Tonto Creek Utility Company is currently solely owned by Jerry Fisher (President) and Pam Fisher (Secretary/Treasurer). As stated above, due to health and other issues of the current owner(s), they are seeking to sell and transfer the water system to Tonto Creek Water Company, L.L.C. which consists of two members, Julie A. Rea (President/General Manager) and James C. Rea (Vice President). The limited liability company was formed on April 21, 2009; approved by the ACC Corporations Division on April 23, 2009; and is in good standing. The Articles of Organization are attached as Exhibit 6.

In response to Staff's questions in the Insufficiency Letter, applicant indicates the transferee has 26 years of public utility experience at Salt River Project and has acted as a General Contractor in the construction of several residential projects. The President/General Manager will manage all office operations including billing, mailings and reporting. The Vice President will provide monthly reads of the meters, support the General Manager, and eventually act as the Certified Operator upon completion of necessary requirements. In the meantime, the current Certified Operator (Jerry Fisher) will continue to operate the system.

The applicant also indicates the transferee will provide full payment at closing and not incur any debt. According to the applicant, benefits of the transfer to customers will include: (1) transferee maintains a residence in the service area (which the current owners do not); and (2) transferee is financially sound, is planning improvements to the well site, and is planning on adding storage capacity in the future. Also, there are no planned changes to the operation and maintenance of the system.

Transferee intends to charge the same rates and is not currently planning any future rate increases. The Utilities Division's Consumer Services database shows no complaints from customers for the last three years.

### **CUSTOMER NOTICE**

Notice of the transfer and hearing in this matter was inserted in each customer bill mailed by first class on September 1, 2009, and is attached as Exhibit 7.

### **COUNTY FRANCHISE**

The Gila County Board of Supervisors approved the transfer of the franchise from Tonto Creek Utility to Tonto Creek Water on August 17, 2009.

### **COMPLIANCE**

#### **ACC**

The Utilities Division Compliance Database does not indicate that Tonto Creek Utility has any ACC compliance delinquencies.

#### **Arizona Department of Environmental Quality ("ADEQ")**

ADEQ reported that Tonto Creek Utility water system (Public Water System Number 04-021) is in compliance with ADEQ requirements and is currently delivering water that meets State and Federal drinking water quality standards required by the Arizona Administrative Code, Title 18, Chapter 4, on July 7, 2009.

Arizona Department of Water Resources ("ADWR")

Tonto Creek Utility is not located in any ADWR Active Management Area ("AMA") and is not subject to any AMA reporting and conservation requirements. Staff received an ADWR compliance status report dated July 7, 2009. ADWR reported that Tonto Creek Utility is currently in compliance with departmental requirements governing water providers and/or community water systems.

**CONCLUSIONS AND RECOMMENDATIONS**

The transferee has public utility experience and will retain the current Certified Operator for operations and maintenance. The transferee will not incur any debt to acquire Tonto Creek Utility's assets and appears to be in good financial condition.

All Tonto Creek Utility's obligations associated with mainline extension agreements will be paid by transferor at closing. There are no customer deposit obligations.

The existing water system has adequate well production and storage capacity to serve the existing connections.

ADEQ reported that the Tonto Creek Utility (PWS Number 04-021) is in compliance with ADEQ requirements and is currently delivering water that meets State and Federal drinking water quality standards required by the Arizona Administrative Code, Title 18, Chapter 4. (ADEQ report dated July 7, 2009).

A check with the Utilities Division Compliance Section showed no delinquent compliance items for Tonto Creek Utility.

Tonto Creek Utility is not located in any Active Management Area ("AMA") and is not subject to any AMA reporting and conservation requirements. Staff received an ADWR compliance status report dated July 7, 2009. ADWR reported that Tonto Creek Utility is currently in compliance with departmental requirements governing water providers and/or community water systems.

Staff recommends approval of the transfer of the assets of Tonto Creek Utility to the Tonto Creek Water Company, L.L.C with the following conditions:

1. That the applicants file finalized contracts within 30 days after closing documentation with the Commission in this docket.
2. That Tonto Creek Water advise customers, through individual notice, of the completion of the transfer and provide all contact information for the new owners.

## MEMORANDUM

TO: Vicki Wallace  
Chief, Consumer Services & Special Projects  
Utilities Division

FROM: Barb Wells  
Information Technology Specialist  
Utilities Division

THRU: Del Smith  
Engineering Supervisor  
Utilities Division

DATE: July 23, 2009

RE: **TONTO CREEK UTILITY COMPANY (DOCKET NO. W-02784A-09-0276)**  
**TONTO CREEK WATER COMPANY, LLC (DOCKET NO. W-20682A-09-0276)**

Tonto Creek has filed an application to transfer its CC&N and sell its assets to Tonto Creek Water Company, LLC.

Attached is a copy of the map for your files.

:bsw

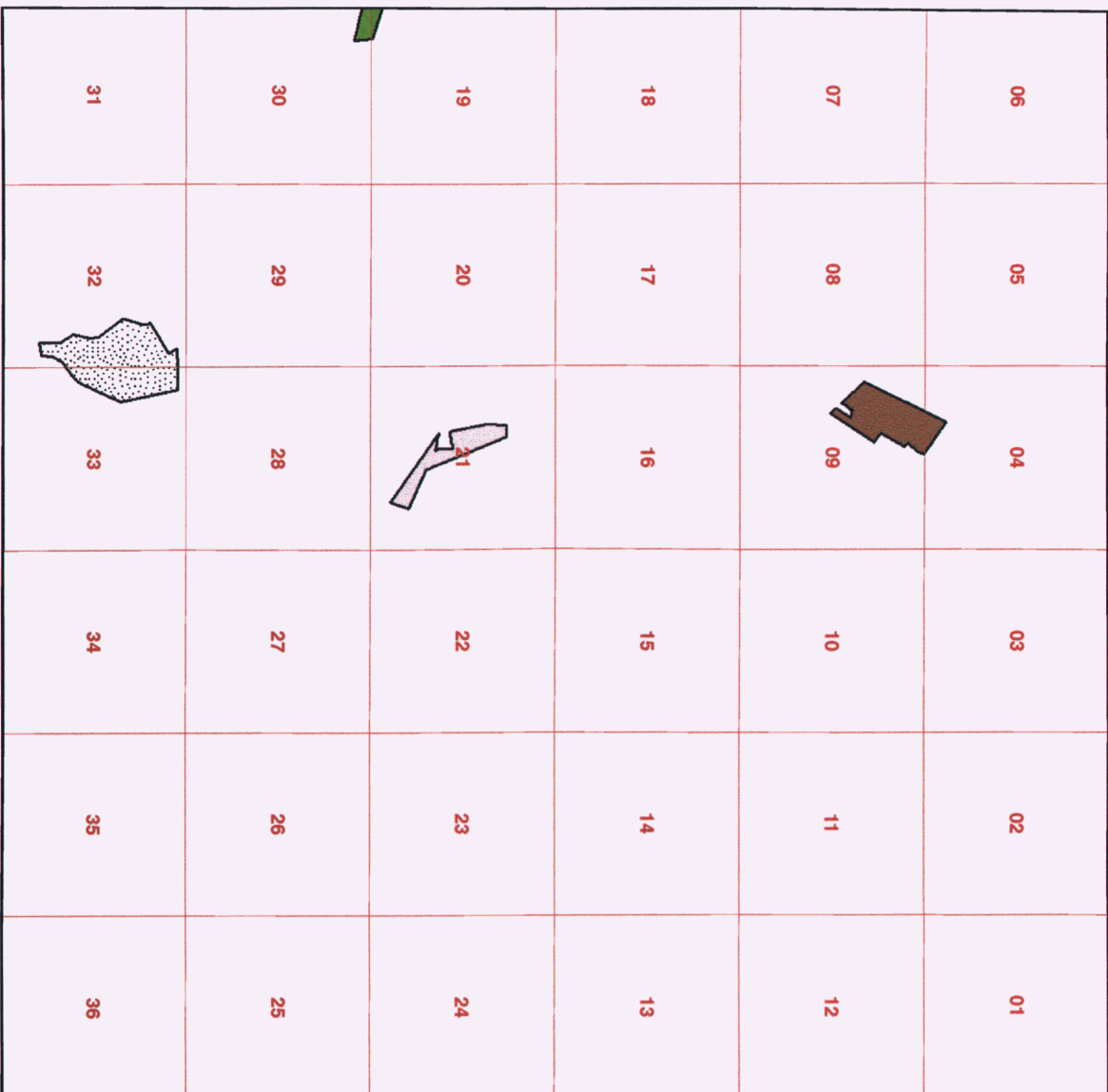
### Attachments

cc: Ms. Pam Fisher  
Ms. Julie A. Rea  
Ms. Deb Person (Hand Carried)  
Mr. Jian Liu

# GILA COUNTY

Map No. 15

## RANGE 12 East



## TOWNSHIP 11 North



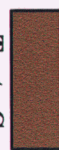
W-2886 (1)

Kohl's Ranch Water Company



SW-3962 (3)

Pine Meadows Utilities, LLC



W-2784 (1)

Tonto Creek Utility Company



W-1580 (2)

Tonto Village Water Company, Inc.

Tonto Creek Utility Company  
Docket No. W-02784A-09-0276  
Application to Transfer to  
Tonto Creek Water Company LLC  
Docket No. W-20682A-09-0276

## AGREEMENT

This agreement (the "Agreement") is entered into as of the 1<sup>st</sup> of June, 2009, by and between Tonto Creek Utility Co. ("Party One") and Tonto Creek Water Co. LLC ("Party Two") (collectively the "Parties"). This agreement is contingent on the approval of application to the Arizona Corporation Commission for a Transfer of Assets and a transfer of Certificate of Convenience and Necessity. The closing will take place as of the date of approval by the Arizona Corporation Commission.

**NOW, THEREFORE**, in consideration of the mutual premises and covenants contained in this Agreement, it is hereby agreed by and between the Parties as follows:

### **1) PARTY ONE OBLIGATIONS.**

Party One does hereby covenant and agree that it shall:

Transfer ownership of all the assets of the "Tonto Creek Utility Co." including, but not limited to, structures, improvements, wells, springs, pumping equipment, distribution reservoirs and standpipes, distribution mains, services, meters, tools, and miscellaneous equipment. Transfer ownership of Lot 23 (Parcel Identification 927-21-001 7 APN #303-03-24A) located in Tonto Creek Estates in a separate contract. Assume responsibility for any existing taxes, liens, encumbrances, or any other issues prior to the finalized contract date.

### **2) PARTY TWO OBLIGATIONS.**

Party Two does hereby covenant and agree that it shall:

Assume ownership, and pay \$15,000, for all of the above mentioned items under "Tonto Creek Water Co. LLC". Purchase Lot 23 (Parcel Identification 927-21-001 1 APN #303-03-24A) located in Tonto Creek Estates in a separate contract. Assume responsibility for any future taxes, liens, encumbrances or any other issues after the finalized contract date.

### **3) REPRESENTATIONS AND WARRANTIES OF THE PARTIES.**

A. Party One hereby represents and warrants:

There are no outstanding issues concerning "Tonto Creek Utility Co.", are in compliance with all county and state ordinances, and in good standing with the Arizona Corporation Commission. Party One has a good and marketable title to the assets being sold. The assets will be free from encumbrances at closing. There are no Judgments, claims, liens or proceedings pending against Party One, the business or the assets being sold, and none will be pending at closing. Party One transfers property "as is and where is".

Party One will make a full refund of all Main Extension Agreements, and meter and service line installation deposits due at closing.

- B. Party Two has inspected the tangible assets that Party Two is purchasing and the premises covered by the purchase and is satisfied with their condition.

#### 4) ARBITRATION.

The Parties agree that any dispute or controversy arising out of this Agreement shall be settled by Arbitration to be held in Gila county, state of Arizona, in accordance with the rules then in effect of the American Arbitration Association. The arbitrator may grant injunctions or other relief in such dispute or controversy. The decision of the arbitrator shall be final, conclusive and binding on the Parties. Judgment may be entered on the arbitrator's decision in any court having jurisdiction. The Parties shall each pay one-half of the costs and expenses of such arbitration, and each of the parties shall separately pay counsel fees and expenses.

#### 5) GENERAL PROVISIONS.

A. Notices. Any notice or other communication provided for herein or given hereunder to a party hereto shall be in writing and shall be given by delivery, by facsimile or by mail (registered or certified mail, postage prepaid, return receipt requested) to the respective party as follows:

If to Party One:  
Tonto Creek Utility Co.  
HC 2 Box 94-G  
Payson, Arizona 85541

If to Party Two:  
Tonto Creek Water Co. LLC  
4486 E. Ford Ave.  
Gilbert, Arizona 85234

B. Successors and Assigns. This Agreement is intended to bind and inure to the benefit of and be enforceable by the Parties, and their respective successors, assigns, heirs, executors and administrators; provided, that neither party may assign any duties or her rights hereunder without the written consent of the other party.

C. Waiver and Amendment. Neither party may waive any of the terms or conditions of this Agreement, nor may this Agreement be amended or modified, except by a duly signed writing referring to the specific provision to be waived, amended or modified.

D. Entire Agreement. This Agreement constitutes the entire agreement with respect to the subject matter hereof, and supersedes all other prior agreements and understandings, both written and oral, among the parties hereto and their affiliates.

E. Severability. Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other provision or any other jurisdiction, but this Agreement will be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provisions had never been contained herein.

F. Governing Law. This Agreement shall be governed by the laws of the state of Arizona, without regard to its conflicts of law provisions.

G. Voluntary Execution of Agreement. This Agreement is executed voluntarily and without any duress or undue influence on the part or behalf of the Parties, with the full intent of releasing all claims. The Parties acknowledge that:

- (i) they have read this Agreement;
- (ii) they have been represented, or, in the alternative, have had the opportunity to obtain representation, in the preparation, negotiation, and execution of this Agreement by legal counsel of their own choice;
- (iii) they understand the terms and consequences of this Agreement and of the releases it contains; and
- (iv) they are fully aware of the legal and binding effect of this Agreement.

H. Counterparts/Electronic Signatures. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument. For purposes of this Agreement, use of a facsimile, e-mail or other electronic medium shall have the same force and effect as an original signature.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

**PARTY ONE:**

Tonto Creek Utility Co.

*Pam Fisher*  
Pam Fisher (Secretary/Treasurer)

*Jerry Fisher*  
Jerry Fisher (President)

State of Arizona  
County of Gila

Acknowledged before me this 28<sup>th</sup>  
day of May, 2009.  
My Commission Expires March 16, 2013

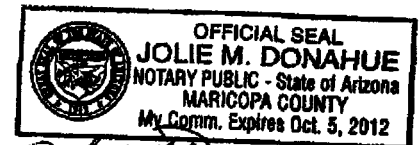
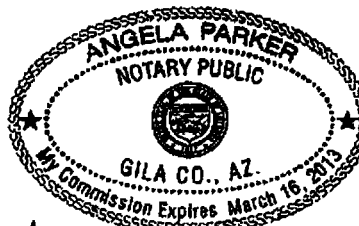
*Angela Parker*  
Notary Public

**PARTY TWO:**

Tonto Creek Water Co. LLC

*Julie A. Rea*  
Julie A. Rea (President/General Manager)

*James C. Rea*  
James C. Rea (Vice President)



*Jolie M. Donahue June 1, 2009*  
Angela Parker for Pam Fisher  
and Jerry Fisher

James and Julie Rea  
4486 E. Ford Ave  
Gilbert, AZ 85234  
October 6, 2009

Ms. Vicki Wallace  
Arizona Corporation Commission  
1200 W. Washington  
Phoenix, AZ 85007

Re: Tonto Creek Utility Land Sale

**Background:** Tonto Creek Estates is a very small subdivision (85 lots) located 20 miles east of Payson. The subdivision is surrounded by the national forest and cannot develop/add any lots. The HOA developed the water system (pumps, tanks, delivery pipes, etc) and charged a flat monthly fee. Several years later, the meters were added. Since then, Jerry Fisher, a resident of Tonto Creek Estates, has operated the system for the last sixteen years. Mr. Fisher decided to sell the water company and approached various residents concerning the purchase. There was not any interest from any of the residents of the subdivision so my wife and I decided to purchase the company and maintain "local ownership". We agreed to pay \$20,000.00 for the company, \$15,000.00 for the system and \$5,000.00 for one half of lot 23. The land purchase would take place upon the sale of the water company.


**Issue:** The subject parcel, lot 23A, cannot have a residential structure constructed on it due to the CC&R's and the small size of the lot. There are a total of 4 ½ lots located within Tonto Creek Estates. The "half lots" are due to family members that inherited three or more lots and required one of the lots to be split. The lot owners are required to pay bridge assessments, HOA fees, irrigation fees and HOA management fees; lot 23A has never paid these fees which had caused concerns among the other residents of TCE. The current owner did not believe the payment of these fees and assessments was warranted because of the "utility" status of Tonto Creek Utility Company. We would like to be a good neighbor and, as owners of a residence in TCE, would like to take ownership of lot 23A as individuals and pay the bridge assessments and all future fees. We feel it would be in the best interest of the water company and the community for the following reasons:

- No residence can be constructed on lot 23A
- The owners of lot 23B are in agreement with the proposed ownership
- We would pay the existing bridge agreement from personal funds (not from water company assets)

- We would purchase title insurance from personal funds (not from water company assets); we have already contacted First American Title to prepare the insurance policy. There has never been a title insurance policy issued to the property.
- This ownership position would be identical for all TCE residents, which own "half lots" and pay "half" the assessments due for "whole" lots. This would definitely resource concerns of the residents of TCE.

**Closing:** We never had any intention of owning and operating a water company. We agreed to purchase it after it had been offered to several residents. The goal was to keep "local" ownership and not have it sold to a large corporation. Tonto Creek Utility has not made a profit for the last two years. We are willing to pay for the bridge assessments, future HOA assessments and title insurance from personal funds and not from Tonto Creek Water Company's limited financial resources. We believe these actions are in the best interest of the community and the successful operation of the Tonto Creek Water Company. Thank you for your consideration of this matter and please contact us if you have any further questions or concerns.


Sincerely,



James C. Rea  
Vice President of Tonto Creek Water Company

**MEMORANDUM**

TO: Vicki Wallace  
Executive Consultant  
Utilities Division

FROM: Juan Manrique   
Public Utilities Analyst I  
Utilities Division

DATE: October 1, 2009

RE: APPLICATION BY TONTO CREEK UTILITY FOR APPROVAL OF THE SALE  
OF ASSETS AND TRANSFER OF CERTIFICATE OF CONVENIENCE AND  
NECESSITY TO TONTO CREEK WATER COMPANY, LLC. (DOCKET NOS.  
W-02784A-09-0276 AND W-20682A-09-0276)

On June 1, 2009, Tonto Creek Utility filed an application for authority to sell the Company's assets and transfer its Certificate of Convenience and Necessity before the Arizona Corporation Commission to Tonto Creek Water Company, LLC.

Tonto Creek Water Company, LLC has agreed to purchase Tonto Creek Utility's assets for \$15,000. Staff performed an analysis of the book value of the assets being transferred, as illustrated in Schedule JCM-1. Column [A] reflects The Company's historical financial information for the year ended December 31, 2008. Staff's analysis shows that the book value of the assets to be transferred is \$15,986. Since the difference between the book value and the transfer price is nominal, Staff concludes that the sale price agreed to by the parties is reasonable.

SO:JCM

Originator: Juan C. Manrique

**FINANCIAL ANALYSIS**

[A]<sup>1</sup>  
12/31/2008

1	Original Cost of Plant	\$83,150
2	Less	
3	Accumulated Depreciation	<u>\$64,414</u>
4	Net Plant in Service	<u>\$18,736</u>
5	Less	
6	Unamortized Premium on Debt	<u>\$2,750</u>
7	Net Value	<u>\$15,986</u>

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11 <sup>1</sup> Column [A] is based on the Company's Financial Statements for the year ended December 31, 2008.

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**MEMORANDUM**

TO: Vicki Wallace  
Chief, Consumer Services

FROM: Jian W. Liu   
Utilities Engineer

DATE: October 5, 2009

RE: In the matter of the application of Tonto Creek Utility Company for approval of the Sale of its Assets and transfer of its Certificate of Convenience and Necessity to Tonto Creek Water Company, LLC  
Docket Nos. W-02784A-09-0276 and W-20682A-09-0276

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**Introduction**

Tonto Creek Utility Company ("Tonto Creek Utility" or "Company") has filed an application with the Arizona Corporation Commission ("ACC") for approval of the sale of its assets and transfer of its Certificate of Convenience and Necessity ("CC&N") to Tonto Creek Water Company, LLC ("Tonto Creek Water"). Tonto Creek Utility provides water service to approximately 70 customers in an area located northeast of Payson below the Mogollon Rim in Gila County. The Company's existing CC&N includes an area totaling approximately 76 acres. Because of age and health issues, the existing owner would like to sell the Company.

**Existing Water System Description**

The Tonto Creek Utility water system consists of a well producing approximately 16 gallons per minute ("GPM"), two 15,000 gallon storage tanks, a 2,000 gallon pressure tank and a distribution system serving 73 connections as of December 2008.

According to the Company the new owner maintains a residence in the service area, and is financially sound. The new owner plans to make improvements to the well site and add additional storage capacity when needed in the future. The Company's current certified operator will continue to operate the water system until a new certified operator can be hired.

**Capacity of Existing Water System**

The Tonto Creek Utility water system has adequate well production and storage capacity to serve the existing connections. The Company's service area is surrounded by the Tonto National Forest; therefore, very little if any growth is expected to occur in the next 5 years.

### **Arizona Department of Environmental Quality ("ADEQ") Compliance**

ADEQ reported that the Tonto Creek Utility water system (Public Water System (PWS) Number 04-021) is in compliance with ADEQ requirements and is currently delivering water that meets State and Federal drinking water quality standards required by the Arizona Administrative Code, Title 18, Chapter 4. (ADEQ report dated July 7, 2009).

### **ACC Compliance**

A check with the Utilities Division Compliance Section showed no delinquent compliance items for Tonto Creek Utility.

### **Arizona Department of Water Resources ("ADWR") Compliance**

Tonto Creek Utility is not located in any ADWR Active Management Area ("AMA") and is not subject to any AMA reporting and conservation requirements. Staff received an ADWR compliance status report dated July 7, 2009. ADWR reported that Tonto Creek Utility is currently in compliance with departmental requirements governing water providers and/or community water systems.

### **Conclusions**

- A. The Tonto Creek Utility water system has adequate well production and storage capacity to serve the existing connections.
- B. ADEQ reported that the Tonto Creek Utility water system (PWS Number 04-021) is in compliance with ADEQ requirements and is currently delivering water that meets State and Federal drinking water quality standards required by the Arizona Administrative Code, Title 18, Chapter 4.
- C. A check with the ACC Utilities Division Compliance Section showed no delinquent compliance items for Tonto Creek Utility.
- D. Tonto Creek Utility is not located in any ADWR AMA and is not subject to any AMA reporting and conservation requirements. ADWR reported that Tonto Creek Utility is currently in compliance with departmental requirements governing water providers and/or community water systems.

APR 21 2009

FILE NO. L-1520843-5

DO NOT WRITE ABOVE THIS LINE, FOR ACC USE ONLY

## ARTICLES OF ORGANIZATION

**DO NOT PUBLISH THIS SECTION**

NOTE: A professional limited liability company is an LLC organized for the purpose of rendering one or more categories of professional service. Professional service is defined as a service that may be lawfully rendered only by a person licensed in this state to render the service.

1. The LLC name must contain the words "limited liability company" or "limited company" or the abbreviations "L.L.C.", "L.C.", "LLC", or "LC". The Professional LLC must contain the words "professional limited liability company" or the abbreviations "P.L.L.C.", "P.L.C.", "PLLC", or "PLC."

2. Must be an Arizona address. DO NOT LEAVE THIS SECTION BLANK

3. If the statutory agent has a PO BOX then they must also provide a physical address or description of the location.

The agent must sign the articles or provide written consent to acceptance of the appointment.

Select one. This form may be used for:

- ☒ **ARIZONA LIMITED LIABILITY COMPANY (A.R.S. §29-632)**
- ☐ **ARIZONA PROFESSIONAL LIMITED LIABILITY COMPANY (A.R.S. §29-841.01)**

**1. The name of the organization:**

- A. \_\_\_\_\_  
LLC Name Reservation File Number (If one has been obtained). If not, leave this line blank
- B. Tonto Creek Water Company LLC  
Limited Liability Company Name

**2. Known place of business in Arizona** (If address is the same as the street address of the statutory agent, write "same as statutory agent". DO NOT LEAVE THIS SECTION BLANK)

Address 4486 E. Ford Ave.

City Gilbert State Arizona Zip 85234

**3. The name and street address of the statutory agent in Arizona**

Name Alpha Legal Forms & More, Inc.

Address 4500 E. Speedway Blvd., Suite 31

City Tucson State AZ Zip 85712

**Acceptance of Appointment by Statutory Agent:**

I Alpha Legal Forms & More, Inc., having been designated to act as  
(Print Name of the Statutory Agent)

Statutory Agent, hereby consent to act in that capacity until removed or resignation is submitted in accordance with the Arizona Revised Statute.

Agent Signature: \_\_\_\_\_

Alpha Legal Forms & More, Inc.

By: Kermit Burton, President

If signing on behalf of a company, please print the company name here.

**DO NOT PUBLISH  
SECTION**

Any required for professional limited liability company. The purpose must state the professional service or services that the company is organized to perform. Professional service is defined as a service that may be lawfully rendered only by a person licensed in this state to render the service.

5. The latest date, if any, on which the Company must dissolve. If a dissolution date should include the month, day and year. Perpetual means continuing forever or indefinitely.

6. Check which management structure will be applicable to your company. Provide name, title and address for each person.

6A. If reserved to the member(s), check the member's box and provide the name(s) and address(es) of each member. NOTE: if reserved to the member(s) you cannot list any manager.

6B. If vested in manager(s) check the manager's box and provide the name(s) and address(es) of each manager and each member who owns a twenty (20%) percent or greater interest in the capital or profits of the LLC/ PLLC.

The person(s) executing this document need not be a manager or member of the company.

**4. Purpose of this (Professional) Limited Liability Company is to provide the following (professional) service(s): (Only required for a Professional LLC Company)**

**5. Dissolution: The latest date of Dissolution**

- ☐ The latest date to dissolve \_\_\_/\_\_\_/\_\_\_ (Please enter month, day and four digit year)  
☒ The Limited Liability Company is Perpetual

**6. Management Structure: (Check one box only) A.R.S. §29-632(5)**

**A. ☒ RESERVED TO THE MEMBER(S)**

IF RESERVED TO THE MEMBER(S), YOU MAY SELECT ONLY THE MEMBER BOX FOR EACH MEMBER LISTED.

**B. ☐ VESTED IN MANAGER(S)**

IF VESTED IN THE MANAGER(S), AT LEAST ONE ENTRY BELOW MUST HAVE THE MANAGER BOX CHECKED.

Name Julie A. Rea

Name James C Rea

☒ Member ☐ Manager (only if "B" is selected above)

☒ Member ☐ Manager (only if "B" is selected above)

Address: 4486 E. Ford Ave.

Address: 4486 E. Ford Ave.

City, Gilbert State, Arizona Zip: 85234

City, Gilbert State, Arizona Zip: 85234

Name \_\_\_\_\_

Name \_\_\_\_\_

☐ Member ☐ Manager (only if "B" is selected above)

☐ Member ☐ Manager (only if "B" is selected above)

Address: \_\_\_\_\_

Address: \_\_\_\_\_

City, \_\_\_\_\_ State, \_\_\_\_\_ Zip: \_\_\_\_\_

City, \_\_\_\_\_ State, \_\_\_\_\_ Zip: \_\_\_\_\_

IF YOU NEED MORE SPACE FOR LISTING MEMBERS / MANAGERS PLEASE ATTACH THE ADDITIONAL PAGE TO THE ARTICLES OF ORGANIZATION.

Executed this 20th day of April, 2009

Executed by: \_\_\_\_\_

Print Name \_\_\_\_\_

LegalZoom.com, Inc., a California corporation, Organizer  
By: Imelda Vasquez, Assistant Secretary

If signing on behalf of a company, please print the company name here.

Phone Number: (323) 962-8600 X. 529

Fax Number: (323) 962-8300

W-02784A-09-276  
W-20688A-09-0376

<sup>242</sup>  
CERTIFICATION

ORIGINAL

I, Pam Fisher, do solemnly swear that I am the Sec/Tres of Tonto Creek Utility and that the attached notice was inserted in each customer bill mailed by first class mail on September 1, 2009.

*Pam Fisher*  
PAM FISHER

State of Arizona )

County of Gila

On this 9th day of September, 2009, before me personally appeared Pam Fisher, whose identity was proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to this document, and he/she voluntarily signed the above/attached document.

Subscribed and signed (read) before me this 9th day September 2009.



My commission expires 3-16-2013

*Angela Parker*  
Notary Public

Arizona Corporation Commission

DOCKETED

SEP 11 2009

DOCKETED BY

*mm*

RECEIVED  
2009 SEP 11 A 9:08  
CORP COMMISSION  
DOCKET CONTROL

**IN THE MATTER OF THE APPLICATION OF TONTO CREEK UTILITY CO. FOR APPROVAL OF THE  
SALE OF ITS ASSETS AND TRANSFER OF ITS CERTIFICATE OF CONVENIENCE AND NECESSITY TO  
TONTO CREEK WATER COMPANY LLC  
Docket No.W-02784A-09-0276 et al.)**

**Summary**

On June 2, 2009, Tonto Creek Utility Co. ("TCUC") filed with the Arizona Corporation Commission ("Commission") an application for approval of the sale of its assets and the transfer of its Certificate of Convenience and Necessity ("CC&N") to Tonto Creek Water Company LLC ("TCWC"). Per the application, TCUC and TCWC entered into an agreement on June 1, 2009, under which TCUC will transfer all of its assets to TCWC in return for \$15,000. The agreement states that there is a separate agreement for the transfer of ownership of Lot 23 in Tonto Creek Estates. The agreement states that, at closing on the transaction, TCUC will pay all main extension agreement refunds due and all meter and service line installation charge refunds due. TCUC has asserted that TCWC will charge customers the same rates and charges currently assessed by TCUC, that the current Certified Operator will continue to operate the system, and that TCWC currently plans no changes to the operation and maintenance of the system.

The Commission's Utilities Division Staff ("Staff") is in the process of analyzing the application and has not yet made any recommendations in this matter. The Commission is not bound by the proposals made by TCUC, TCWC, Staff, or any intervenors. The Commission will determine whether to approve the sale of assets and CC&N transfer based on the evidence received through an evidentiary hearing in this matter.

**If You Are a TCUC Customer**

If the sale of assets and CC&N transfer are approved, TCWC will be the exclusive provider of water utility service to your area. TCWC is under the jurisdiction of the Commission. TCWC's address is 4486 East Ford Avenue, Gilbert, AZ 85234. Phone: 478-664-220.

If you have a claim against TCUC, such as a claim for refund of a security deposit or service line and meter installation charges or for refund on a main extension agreement, and you have not been contacted by TCUC regarding your claim, you must present your claim to TCUC by October 15, 2009. Direct your claim to TCUC at HC 2 Box 94G, Payson, AZ 85541. Phone: 928-478-4384.

**How You Can View or Obtain a Copy of the Application and Other Documents**

Copies of the application and the other documents filed in this matter are available at TCUC's offices 227 North Tonto Rim Ranch Road, Payson, Arizona 85541; at the Commission's Docket Control Center at 1200 West Washington, Phoenix, Arizona, for public inspection during regular business hours; and on the Internet via the Commission's website ([www.azcc.gov](http://www.azcc.gov)) using the e-Docket function.

**Arizona Corporation Commission Public Hearing Information**

The Commission will hold a hearing in this matter beginning on October 27, 2009, at 10:00 a.m. in Hearing Room #1 at the Commission's offices, 1200 West Washington Street, Phoenix, Arizona. Public Comments will be taken on the first day of the hearing. Written public comments may be submitted by mailing a letter referencing Docket No. W-02784A-09-0276 et al. to Arizona Corporation Commission, Consumer Services Section, 1200 West Washington, Phoenix, AZ 85007, or by e-mail. For a form to use and instructions on how to e-mail comments to the Commission, go to [http://www.azcc.gov/divisions/utilities/forms/public\\_comments.pdf](http://www.azcc.gov/divisions/utilities/forms/public_comments.pdf). If you require assistance, you may contact the Consumer Services Section at 1-800-222-7000 or 602-542-4251.

**About Intervention**

Any person or entity entitled by law to intervene and having a direct and substantial interest in the matter will be permitted to intervene. If you desire to intervene, you must file a written motion to intervene with the Commission no later than October 15, 2009. You must send a copy of the motion to TCUC and TCWC, or to their counsel, and to all parties of record. Your motion to intervene must contain the following:

1. Your name, address, and telephone number and the name, address, and telephone number of any person upon whom service of documents is to be made, if not yourself;
2. A short statement of your interest in the proceeding (e.g., a customer of TCUC, etc.); and
3. A statement certifying that you have mailed a copy of the motion to intervene to TCUC and TCWC, or their counsel, and to all parties of record in the case.

The granting of motions to intervene shall be governed by A.A.C. R14-3-105, except that all motions to intervene must be filed on or before October 15, 2009. If representation by counsel is required by Rule 31 of the Rules of the Arizona Supreme Court, intervention will be conditioned upon the intervenor's obtaining counsel to represent the intervenor. For information about requesting intervention, visit the Commission's website at <http://www.azcc.gov/divisions/utilities/forms/interven.pdf>. The granting of intervention, among other things, entitles a party to present sworn evidence at hearing and to cross-examine other witnesses. However, failure to intervene will not preclude any interested person or entity from appearing at the hearing and providing public comment on the application or from filing written comments in the docket for the case.

#### ADA/Equal Access Information

The Commission does not discriminate on the basis of disability in admission to its public meetings. Persons with a disability may request a reasonable accommodation such as a sign language interpreter and request this document in an alternative format by contacting the ADA Coordinator, Shaylin Bernal, at [sabernal@azcc.gov](mailto:sabernal@azcc.gov), voice phone number (602)542-3931. Requests should be made as early as possible to allow time to arrange the accommodation.